

EXHIBIT 11

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHAYA GROSSBAUM and MENACHEM
GROSSBAUM, individually and as
guardians ad litem of ROSIE GROSSBAUM,

Plaintiffs,

v.

GENESIS GENETICS INSTITUTE, LLC, MARK
R. HUGHES, NEW YORK UNIVERSITY
SCHOOL OF MEDICINE and NEW YORK
UNIVERSITY HOSPITALS CENTER,
ABC CORPS. 1-10, JOHN DOES 1-10,

Defendants.

Hon. Garrett E. Brown, Jr.

Civil Action No. 07-1359 (GEB)

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AT 8:30 M
WILLIAM T. WALSH
CLERK

BROWN, Chief Judge:

This matter comes before the Court on the appeal (Doc. No. 34) filed by Plaintiffs Chaya Grossbaum and Menachem Grossbaum from two orders of Magistrate Judge Esther Salas. For the following reasons, the Court will affirm the orders of Magistrate Judge Salas.

Background

On September 21, 2009, during a case management conference before Magistrate Judge Salas, Plaintiffs sought to reopen fact discovery, which had closed on August 3, 2009. Magistrate Judge Salas denied Plaintiffs' request at the September 21 conference and entered a Case Management Order on September 23, 2009. On October 13, 2009, Plaintiffs submitted a letter requesting reconsideration of Magistrate Judge Salas's decision. Magistrate Judge Salas denied Plaintiff's request, noting that Plaintiffs had filed their request more than 10 days after the

Order regarding fact discovery and that Plaintiffs had failed to set forth any new facts or a change in controlling law.

Discussion

Pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72(a), and Local Civil Rule 72.1(a), a United States Magistrate Judge may hear non-dispositive motions. On appeal, a district court may modify or set aside a magistrate judge's non-dispositive order if the ruling was "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); L. Civ. R. 72.1(c)(1)(A); *see also Haines v. Liggett Group Inc.*, 975 F.2d 81, 91 (3d Cir. 1992); *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1113 (3d Cir. 1986). A ruling is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Dome Petroleum Ltd. v. Employers Mut. Liab. Ins. Co.*, 131 F.R.D. 63, 65 (D.N.J. 1990) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). A magistrate judge's order is contrary to law "when the magistrate judge has misinterpreted or misapplied the applicable law." *Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006) (citing *Pharm. Sales & Consulting Corp. v. J.W.S. Delavau Co.*, 106 F. Supp. 2d 761, 764 (D.N.J. 2000)). "A magistrate judge's ruling on a non-dispositive matter such as a discovery motion is 'entitled to great deference and is reversible only for abuse of discretion.'" *Eisai Co. v. Teva Pharms. USA, Inc.*, 629 F. Supp. 2d 416, 433-34 (D.N.J. 2009) (quoting *Kresefky v. Panasonic Commc'ns & Sys. Co.*, 169 F.R.D. 54, 64 (D.N.J. 1996)).

This Court will affirm Magistrate Judge Salas's Order denying Plaintiffs' request to reopen fact discovery. Plaintiffs' request was made on September 21, 2009, and fact discovery had closed on August 3, 2009. Prior to the close of discovery, Magistrate Judge Salas accommodated the parties' scheduling concerns and had entered six different scheduling orders based on counsels' requests regarding discovery. Plaintiffs failed to demonstrate good cause to reopen discovery before Magistrate Judge Salas and have not persuaded this Court. Magistrate Judge Salas's Order refusing to reopen fact discovery was not an abuse of discretion and is neither clearly erroneous nor contrary to law.

This Court will also affirm Magistrate Judge Salas's Order denying Plaintiffs' request for reconsideration. Plaintiffs' request was untimely and did not state a proper basis for reconsideration.

Conclusion

For the foregoing reasons, this Court will affirm Magistrate Judge Salas's September 21, 2009 Order refusing to reopen fact discovery and November 23, 2009 Order denying Plaintiffs' motion for reconsideration. An appropriate form of order accompanies this Memorandum Opinion.

Dated: February 9, 2010

S/Garrett E. Brown, Jr.
Garrett E. Brown, Jr., Chief Judge
United States District Court